

REMARKS

Applicants respectfully request entry of this amendments and reconsideration of this application in view of the amendment and remarks made herein.

Claims 10-12 and 27-30 are currently pending.

New claims 27-30 have been added.

Independent claim 10 has been amended herein. Support for the amendment of claim 10 can be found on pages 4-7 and 11-14 of the instant application and pages 7-8 and 12 of 60/118,356 provisional application filed February 2, 1999.

Dependent claim 27 has been added and recites the method of claim 10 wherein the immunogenic material is an allergen. The applicant respectfully submits that antigenic materials are known to one skilled in the art as immunogenic since they induce an immune response. *See*, Gotlub, Edward S., *Immunology: A Synthesis*, (1987), pg. 18-35, 463.

New claims 28-30 are supported by the disclosure on page 14 of the specification of the 09/496,771 application. Thus, the claims of the instant application are fully supported by the disclosure of the parent application as well as the prior provisional application.

Claim Rejections Under 35 U.S.C. § 102 (b)

Claims 10 – 12 were rejected under 35 U.S.C. § 102 (b) as being anticipated by Lee et al. (WO 00/15194) (“Lee”). According to the Examiner, Lee et al. disclose the use of calcium phosphate particles as adjuvant or delivery vehicle for therapeutic compounds or antigens, that their particles can be spherical and that they can adjust the roughness, degree of crystallinity, particle roughness, porosity and density of their particles, and that the particles can be used to deliver allergens. Further, according to the Examiner, Lee et al. disclose that their particles can be administered subcutaneously, via peroral or ocular routes or as an inhalant, suspended (i.e. act as a colloid) in a non-toxic aqueous medium and administered as an eye drop, or incorporated into an ointment. As amended, independent claim 10 recites a method for inducing a therapeutic immune response in a patient who has already previously experienced an immunogenic response, comprising delivering one or more smooth particles comprising calcium phosphate having an immunogenic material at least partially coating the particle or impregnating the particles or both, to the patient in need thereof. Claims 10-12 and 27 are supported by the disclosure of applicants’ provisional application number

60/118,356 filed on February 2, 1999. As such, the Lee reference does not qualify as § 102 (b) prior art against these claims. Applicants respectfully traverse the rejection and request that the rejection of all pending claims 10 – 12 be withdrawn.

Independent claim 28 has been added and recites a method for inducing a therapeutic immune response in a patient who has already previously experienced an allergic response, comprising delivering one or more smooth, spherical, colloidal particles with one or more surface irregularity comprising calcium phosphate having an allergen at least partially coating the particle or impregnating the particles or both, to the patient in need thereof, wherein said one or more surface irregularity is less than 100nm. Because Lee does not disclose, teach, or suggest a method of inducing a therapeutic immune response in a patient who has already previously experienced an allergic response, comprising delivering one or more smooth particles with one or more surface irregularity comprising calcium phosphate having an allergen at least partially coating the particle or impregnating the particles or both, to the patient in need thereof, wherein said one or more surface irregularity is less than 100nm, applicants respectfully submit that the Lee reference does not anticipate the limitations of the instant invention. Furthermore, the claims are non-obvious since the claimed method provides for a use of smooth calcium phosphate particles in a manner not contemplated by Lee, namely by using one or more smooth, spherical, colloidal particles with one or more surface irregularity comprising calcium phosphate having an allergen at least partially coating the particle or impregnating the particles or both, to the patient in need thereof, wherein said one or more surface irregularity is less than 100nm. To the contrary, Lee teaches away from the use of the smooth calcium phosphate particles of the present invention and states that “[a]n adjuvant comprising particles with a greater degree of roughness is generally more likely to attract desired cells than an adjuvant with smooth particles.” (Lee at page 16, ll. 27-29).

Conclusion

Allowance of the pending claims is respectfully requested. The Examiner is encouraged to contact the undersigned attorney regarding any matter concerning this application.

Date:

Jan. 4, 2008

By:

Respectfully submitted,
KENYON & KENYON LLPAnthony Giaccio
Reg. No. 39,684KENYON & KENYON LLP
One Broadway
New York, NY 10004-1007
Tel 212.425.7200
Fax 212.425.5288
CUSTOMER NUMBER 26646